

# Emergency Rules

## DECLARATION OF EMERGENCY

### Department of Economic Development Racing Commission

Coupled Entries/Fields in  
Trifectas (LAC 35:XIII.11113)

The Racing Commission is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., repeals the following rule effective January 2, 1998, and it shall remain in effect for 120 days or until this rule takes effect through the normal promulgation process, whichever occurs first.

The Racing Commission finds it necessary to repeal this rule to eliminate the prohibition of coupled entries and fields in trifecta races.

### Title 35 HORSE RACING Part XIII. Wagering

#### Chapter 111. Trifecta

##### §11113. Coupled Entries; Fields

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1 and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 11:616 (June 1985), repealed by the Department of Economic Development, Racing Commission, LR 24:

Paul D. Burgess  
Executive Director

9801#010

## DECLARATION OF EMERGENCY

### Department of Economic Development Racing Commission

Pari-Mutuel Tickets (LAC 35:XV.12341)

The Racing Commission is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following emergency rule, effective December 19, 1997, and it shall remain in effect for 120 days or until this rule takes effect through the normal promulgation process, whichever occurs first.

The Racing Commission finds it necessary to amend this rule

to provide for conditions of issued pari-mutuel tickets and refunds thereof. It also corrects the language of the previous version of this rule.

### Title 35 HORSE RACING

#### Part XV. Off-Track Wagering

#### Chapter 123. General Rules

##### §12341. Pari-Mutuel Tickets

A. - B. ...

C. When wagers are accepted by a host track, guest track or off-track wagering facility and a pari-mutuel ticket is issued therefor, such wagers are to be considered enforceable contracts, evidenced by possession of winning tickets; and such tickets shall be honored by all cashiers of the host track and the off-track wagering facility where such wagers are placed. Refunds of wagers shall be made only:

1. on a horse that is scratched; or
2. if a race is declared off; or
3. if a manual merge is rendered impossible because of

an act or event beyond the control of a host track and/or the host track's off-track wagering facility including, but not limited to, a catastrophe or acts of God. However, if a licensee, while participating in a common pooled wagering network with one or more other tracks, experiences transmission failure or other malfunctions with either the guest or host totalizator system which prevents the merger or required wagering data, then, in such events, the licensee shall honor the pari-mutuel ticket.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:176 and R.S. 4:211-227.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 14:290 (May 1988), amended by the Department of Economic Development, Racing Commission, LR 17:261 (March 1991), LR 24:

Paul D. Burgess  
Executive Director

9801#001

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Office of Public Health

Shellfish Harvest Permitting

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Office of Public Health is amending the rules pertaining to harvesting shellfish for

depuration and low acid canning.

These changes will make it permissible for the oyster industry to harvest the product from waters that have been historically considered off limits for bacteriological reasons when taken under a new permit system authorized by the amended rule. The rule change will open up over 50 percent of this state's productive oyster reefs that were formerly closed to harvesting by the state health officer, and has the potential of offering significant financial relief to an economically distressed industry. The oyster canning season traditionally ends in mid April of each year and unless the proposed rule change is promulgated immediately on an emergency basis, the entire window of opportunity for taking advantage of this new rule will be lost.

The effective date of this rule is January 1, 1998 and shall remain in effect for 120 days or until the final rule takes effect through the normal promulgation process, whichever occurs first.

*(Editor's Note: The following is an amendment to the Food, Drug and Cosmetic Regulations dated September, 1968 [the "Red Book"]. These proposed rules amend Chapter 4, Part I, specifically, Shellfish Depuration and Thermal Processing (Low Acid Canned) Regulations. A copy of the "Red Book" is available for inspection at any Office of Public Health regional office and at the Office of the State Register.)*

#### **49:6.1230 Depuration and Thermal Processing (Low Acid Canned) Harvesting Permit**

A. Any person, firm or corporation engaging in the business of harvesting shellfish for depuration or thermal processing (low acid canned) purposes from areas not approved by the state health officer for direct market harvesting shall be required to have an unsuspended or unrevoked harvesting-for-depuration or thermal processing permit issued by the Department of Health and Hospitals. Growing waters to be utilized for harvesting purposes must meet or exceed the Department of Health and Hospitals' criteria for restricted area classification. A fee of \$50 shall be charged for each 30-day permit.

B. Harvesting-for-depuration or thermal processing (low acid canned) permits shall be granted only to responsible individuals with no recent history of illegal harvesting violations under the following conditions:

1. no permittee, vessel captain or crew member may serve on any vessel subject to this permit who has been cited or found guilty of violations relative to the harvesting of shellfish within three years of the application date; provided, however, that said permittee, crew member or vessel captain may receive a waiver of this condition with regard to those citations which did not result in a conviction upon the appropriate showing being made to the Department of Wildlife and Fisheries;

2. a \$5,000 cash bond consisting of a bank cashier's check or money order made payable to the Department of Health and Hospitals shall be posted by each permittee;

3. harvesting and transporting of shellfish to depuration plants shall be permitted only during daylight hours with all activities completed no later than 30 minutes after official sunset each day. Harvesting of shellfish for thermal processing (low acid canned) plants shall be permitted only during daylight hours with all activities completed no later than 30 minutes after official sunset each day. Transportation of shellfish intended for thermal processing (low acid canned)

shall be allowed at all times;

4. the permittee shall be responsible for notifying the Department of Wildlife and Fisheries prior to leaving port to fish under permitted conditions and immediately upon returning from permitted trip each day. The Department of Wildlife and Fisheries shall be notified by calling 1-800-442-2511;

5. all areas utilized for harvesting-for-depuration and thermal processing (low acid canned) purposes shall be *red flagged* so that they may be easily spotted by both aircraft and boat. *Red flagged*, as used in this Paragraph, means that the four outside corners of an area must be marked with poles with red flags attached;

6. the sacking of shellfish and the storage of empty shellfish sacks aboard permitted vessels is prohibited;

7. all harvesting and transporting of shellfish for delivery to a depuration or thermal processing (low acid canned) plant shall be done in the direct line of sight of a commissioned municipal, parish, or state police officer. The payment of the surveillance officer's salary and expenses shall be the responsibility of the permittee;

8. a maximum of five harvest boats may be included on one permit under the following conditions:

a. the permittee, vessel captain and crew members shall all be held liable for rule violations;

b. all vessels or transporting vehicles must be in direct line of sight of state-approved surveillance officer during harvesting and transporting of shellfish to the depuration or thermal processing (low acid canned) plant;

c. each permitted vessel shall have the permit number in at least 6-inch high letters on a contrasting background so as to be visible from low flying aircraft or from any other enforcement vessels in the immediate area;

9. failure to comply with any of the permitting requirements specified in this Section shall result in the following administrative actions:

a. the harvesting-for-depuration or thermal processing (low acid canned) permit and all permitting privileges shall be immediately suspended by the Department of Wildlife and Fisheries or the Department of Health and Hospitals;

b. at the discretion of the Department of Health and Hospitals and the Department of Wildlife and Fisheries, all shellfish harvested for depuration or thermal processing (low acid canned) purposes shall be returned to the original growing waters or destroyed at the permittee's expense;

c. if said changes are upheld in an administrative hearing, the following additional penalties shall be imposed:

i. harvesting-for-depuration, thermal processing (low acid canned) and transplant permitting privileges shall be denied for a period of three years;

ii. the \$5,000 cash bond posted by the permittee shall be forfeited and retained by the state.

Bobby P. Jindal  
Secretary

9801#006

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

#### Medicaid Eligibility—Continuity of Stay for Long-Term Care and Home and Community Based Services

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This rule is in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the rule, whichever occurs first.

The Bureau of Health Services Financing has consistently applied continuity of stay as a condition for ongoing Medicaid eligibility for long-term care and home and community based services. Continuity of stay is considered to be interrupted when a recipient either is absent from a facility or does not receive waiver services for a period of more than 14 consecutive days, even if the recipient was not discharged from the facility or waiver. As a result of a clarification from the Health Care Financing Administration (HCFA), the bureau has decided to revise the continuity of stay requirement to allow up to 30 consecutive days for temporary absence from a facility or nonreceipt of waiver services before continuity of stay is considered to be interrupted for individuals eligible under the special income level.

An emergency rule, effective September 23, 1997, was promulgated in order to protect the health and welfare of Medicaid recipients who receive long-term care and home and community based services by assuring continued eligibility for these services when continuity of stay is interrupted for a period of less than 30 days. No change in expenditures is anticipated as a result of implementation of this emergency rule.

#### Emergency Rule

Effective January 21, 1998, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following requirement governing continuity of stay for the purpose of determining continued eligibility for long-term care and home and community based services. In addition, the adoption of this emergency rule revises the continuity of stay requirement contained in Section I of the Medicaid Eligibility Manual as follows:

A temporary absence from a facility or nonreceipt of waiver services shall be allowed for a period up to 30 consecutive days before continuity of stay will be considered interrupted for individuals eligible under the special income level.

Bobby P. Jindal  
Secretary

9801#050

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

#### Mentally Retarded/Developmentally Disabled—Pinecrest Waiver Slot Allocation

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following emergency rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This emergency rule is adopted in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing administers the Mentally Retarded/Developmentally Disabled (MR/DD) waiver under Home and Community Based Services Waiver Programs. The bureau adopted regulations governing the MR/DD Waiver Program to terminate the previous restrictions placed on the assignment of vacated waiver slots; establish methodology for the assignment of slots vacated by discharged waiver participants and the 342 previously unoccupied slots; and clarify policies on admission and discharge criteria, mandatory reporting requirements and the effective date on which Medicaid reimbursement for waiver services shall begin (*Louisiana Register*, Volume 23, Number 6).

Effective October 1, 1997, the department determined that it was necessary to amend the language in the June 20, 1997 rule regarding the allocation of waiver slots to residents of the Pinecrest Developmental Center. The language is being amended to include the Hammond Developmental Center in the targeted groups for slot allocation in the following manner. A maximum of 160 slots shall be available to current residents of the Pinecrest and Hammond Developmental Centers or their alternates who successfully complete the financial and medical certification eligibility process and are certified for the waiver. The term *alternate* is defined as a current resident of a private ICF-MR community home who:

1. willingly chooses to apply for waiver participation; and
2. resides in a community group home that has agreed to accept a Pinecrest or Hammond Developmental Center resident for placement if a resident of the community home is certified for waiver participation. The Pinecrest or Hammond resident must be given freedom of choice in the selection of a private ICF-MR community home placement in the area of the resident's choice, based on availability. The slot in the community home, if vacated, will remain a slot for a Pinecrest or Hammond Developmental Center recipient as long as the department continues to transition individuals from the developmental centers. DHH, through OCDD, reserves the right of approval for the transitioning of these recipients into vacated slots.

This subsequent emergency rule is necessary to assure the health and welfare of residents of Pinecrest Developmental Center, Hammond Developmental Center and private ICF-MR community homes by assuring access to those services appropriate to meet their needs.

#### Emergency Rule

Effective January 29, 1998, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the language contained in the June 20, 1997 rule regarding the allocation of waiver slots to residents of the Pinecrest Development Center:

A maximum of 160 slots shall be available to current residents of the Pinecrest and Hammond Developmental Centers or their alternates who successfully complete the financial and medical certification eligibility process and are certified for the waiver. The term *alternate* is defined as a current resident of a private ICF-MR community home who:

1. willingly chooses to apply for waiver participation; and
2. resides in a community group home that has agreed to accept a Pinecrest or Hammond Developmental Center resident for placement if a resident of the community home is certified for waiver participation. The Pinecrest or Hammond resident must be given freedom of choice in the selection of a private ICF-MR community home placement in the area of the resident's choice, based on availability. The slot in the community home, if vacated, will remain a slot for a Pinecrest or Hammond Developmental Center recipient as long as the department continues to transition individuals from the developmental centers. DHH, through OCDD, reserves the right of approval for the transitioning of these recipients into vacated slots.

Bobby P. Jindal  
Secretary

9801#051

## DECLARATION OF EMERGENCY

### Department of Social Services Office of Family Support

#### Family Independence Temporary Assistance Program (FITAP)—Alien Eligibility (LAC 67:III.1141 and 1143)

The Department of Social Services, Office of Family Support has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to adopt the following emergency rule in the Family Independence Temporary Assistance Program (FITAP). It is necessary to extend emergency rulemaking, since the declaration of emergency of October 1, 1997 was effective for a maximum of 120 days and would expire (on January 30) before the final rule takes effect March 1, 1998.

Pursuant to provisions of Public Law 104-208, the United States' Omnibus Consolidated Appropriations Act and Public Law 105-33, the Balanced Budget Act of 1997, a change in FITAP policy concerning the eligibility of certain aliens is

required. This emergency rule is necessary to effect these mandated regulations to avoid sanctions or penalties which could be imposed by further delaying implementation.

#### **Title 67**

### **SOCIAL SERVICES**

#### **Part III. Office of Family Support**

#### **Subpart 2. Family Independence Temporary Assistance Program (FITAP)**

#### **Chapter 11. Application, Eligibility, and Furnishing Assistance**

#### **Subchapter A. Application, Determination of Eligibility, and Furnishing Assistance**

#### **§1141. Eligibility Requirements for Aliens**

A.1. - 4. ...

5. an alien whose deportation is withheld under §243(h) of such Act (as in effect immediately before the effective date of §307 of Division C of Public Law 104-208) or §241(b)(3) of such Act (as amended by §305(a) of Division C of Public Law 104-208);

6. an alien who is granted conditional entry pursuant to §203(a)(7) of such Act, as in effect prior to April 1, 1980; or

7. an alien who is a *Cuban* or *Haitian* entrant, as defined in §501(e) of the Refugee Education Assistance Act of 1980;

8. an alien who has been battered or subjected to extreme cruelty in the United States by a spouse or parent or by a member of the spouse's or parent's family residing in the same household as the alien if the spouse or parent consented to, or acquiesced in, such battery or cruelty. The individual who has been battered or subjected to extreme cruelty must no longer reside in the same household with the individual who committed the battery or cruelty. The agency must also determine that a substantial connection exists between such battery or cruelty and the need for the benefits to be provided. The alien must have been approved or have a petition pending which contains evidence sufficient to establish:

a. the status as a spouse or child of a United States citizen pursuant to clause (ii), (iii), or (iv) of §204(a)(1)(A) of the Immigration and Nationality Act (INA); or

b. the classification pursuant to clause (ii) or (iii) of §204(a)(1)(B) of the INA; or

c. the suspension of deportation and adjustment of status pursuant to §244(a)(3) of the INA; or

d. the status as a spouse or child of a United States citizen pursuant to clause (i) of §204(a)(1)(A) of the INA, or classification pursuant to clause (i) of §204(a)(1)(B) of the INA;

9. an alien child or the alien parent of a battered alien as described in §1141.A.8.

B.1. - 2. ...

3. the alien's deportation is withheld under §243(h) of such Act (as in effect immediately before the effective date of §307 of Division C of Public Law 104-208) or §241(b)(3) of such Act (as amended by §305(a) of Division C of Public Law 104-208);

4. the alien is a *Cuban* or *Haitian* entrant, as defined in §501(e) of the Refugee Education Assistance Act of 1980;

5. the alien is an *Amerasian* immigrant admitted pursuant to §584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988;

6. the alien is lawfully residing in the United States and is a *veteran* (as defined in §§101, 1101, or 1301, or as described in §107 of Title 38, *United States Code*) who is honorably discharged for reasons other than alienage and who fulfills the minimum active-duty service requirements of §5303A(d) of Title 38, *United States Code*; his spouse or the unremarried surviving spouse if the marriage fulfills the requirements of §1304 of Title 38, *United States Code*; and unmarried dependent children; or

7. the alien is lawfully residing in the United States and is on active duty (other than for training) in the Armed Forces and his spouse or the unremarried surviving spouse, if the marriage fulfills the requirements of §1304 of Title 38, *United States Code*, and unmarried dependent children.

C. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 52:48687 et seq., P.L. 104-193, P.L. 104-208, and P.L. 105-33.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Eligibility Determinations, LR 14:280 (May 1988), LR 14:438 (July 1988), amended by the Department of Social Services, Office of Family Support, LR 23:448 (April 1997), LR 24:

#### **§1143. Income and Resources of Alien Sponsors**

In determining eligibility and benefit amount for an alien other than those identified in §1141.A.8 and 9, the income and resources of his/her sponsor and the sponsor's spouse must be considered. The income and resources of an alien sponsor and the sponsor's spouse shall not apply to benefits during a 12-month period for those aliens identified in §1141.A.8 and 9. After a 12-month period, only the income and resources of the batterer shall not apply if the alien demonstrates that such battery or cruelty has been recognized in an order of a judge or administrative law judge or a prior determination of the INS, and the agency determines that such battery or cruelty has a substantial connection to the need for benefits. A *sponsor* is defined as any person who executed an affidavit of support pursuant to §213A of the Immigration and Nationality Act on behalf of the alien. The income and resources of the sponsor and the sponsor's spouse shall apply until the alien:

1. achieves United States citizenship through naturalization; or

2. has worked 40 qualifying SSA quarters of coverage, or can be credited with such qualifying quarters, and in the case of any such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any federal means-tested public benefit during any such period. In determining the number of qualifying quarters of coverage an alien shall be credited with:

a. all of the qualifying quarters of coverage worked by a parent of such alien while the alien was under age 18; and

b. all of the qualifying quarters worked by a spouse of such alien during their marriage, and the alien remains married to such spouse or such spouse is deceased.

3. No such qualifying quarter of coverage that is creditable under Title II of the Social Security Act for any period beginning after December 31, 1996, may be credited to an alien under §1143.A.2.a or b if the parent or spouse of such alien received any federal means-tested public benefit (as provided under §403) during the period for which such

qualifying quarter of coverage is so credited. Notwithstanding §6103 of the *Internal Revenue Code* of 1986, the commissioner of Social Security is authorized to disclose quarters of coverage information concerning an alien and an alien's spouse or parents to a government agency for the purposes of this title.

AUTHORITY NOTE: Promulgated in accordance with P.L. 97-35, P.L. 100-485 (§402) and 45 CFR 205-206,233-234, P.L. 104-193, P. L. 104-208, and P.L. 105-33.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:8 (January 1982), amended by the Department of Social Services, Office of Family Support, LR 23:448 (April 1997), LR 24:

Madlyn B. Bagneris  
Secretary

9801#046

## DECLARATION OF EMERGENCY

### Department of Social Services Office of Family Support

#### Food Stamps—Alien Eligibility (LAC 67:III.1994 and 1995)

The Department of Social Services, Office of Family Support has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to adopt the following emergency rule in the Food Stamp Program. It is necessary to extend emergency rulemaking, since the declaration of emergency of October 1, 1997 was effective for a maximum of 120 days and would expire (on January 30) before the final rule takes effect March 1, 1998.

Pursuant to provisions of Public Law 104-208, the United States' Omnibus Consolidated Appropriations Act of 1996, and Public Law 105-33, the Balanced Budget Act of 1997, a change in food stamp policy concerning the eligibility of certain aliens is required. This emergency rule is necessary to effect these mandated regulations to avoid sanctions or penalties which could be imposed by further delaying implementation.

#### Title 67

#### SOCIAL SERVICES

#### Part III. Office of Family Support

#### Subpart 3. Food Stamps

#### Chapter 19. Certification of Eligible Households

#### Subchapter K. Action on Households with Special Circumstances

#### §1994. Alien Eligibility

A.1. - 2. ...

3. an alien whose deportation is withheld under §243(h) of such Act (as in effect immediately before effective date of §307 of division C of P.L. 104-208) or §241(b)(3) of such Act (as amended by §305(a) of division C of P.L. 104-208);

4. *Cuban* and *Haitian* entrants, as defined in §501(e) of the Refugee Education Assistance Act of 1980;

5. *Amerasian* immigrants admitted pursuant to §584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988.

B. ...

1. veterans who have met the minimum active duty service requirements of §5303 A(d) of Title 38, *United States Code*, who were honorably discharged for reasons other than alienage and their spouses or unremarried surviving spouses, if the marriage fulfills the requirements of §1304 of Title 38, *United States Code*, and unmarried dependent children;

2. active duty personnel (other than active duty for training) and their spouses or unremarried surviving spouses, if the marriage fulfills the requirements of §1304 of Title 38, *United States Code*, and unmarried dependent children;

3. ...

C. An alien and/or child of an alien or the alien parent of a child who has been battered or subjected to extreme cruelty in the United States by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household as the alien, and the spouse or parent consented to, or acquiesced in, such battery or cruelty is eligible if the agency providing the benefits determines there is a substantial connection between such battery or cruelty and the need for benefits to be provided. The individual who has been battered or subjected to extreme cruelty must no longer reside in the same household with the individual who committed the battery or cruelty. Additionally, the alien must have been approved or have a petition pending which contains evidence sufficient to establish:

1. the status as a spouse or child of a United States citizen pursuant to clause (ii), (iii), or (iv) of §204(a)(1)(A) of the INA; or

2. the classification pursuant to clause (ii) or (iii) of §204(a)(1)(B) of the INA; or

3. the suspension of deportation and adjustment of status pursuant to §244(a)(3) of the INA; or

4. the status as a spouse or child of a United States citizen pursuant to clause (i) of §204(a)(1)(A) of the INA, or classification pursuant to clause (i) of section 204(a)(1)(B) of the INA.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, P.L. 104-208, and P.L. 105-33.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:83 (January 1997), amended LR 24:

#### §1995. Sponsored Aliens

The full amount of income and resources of an alien's sponsor and the sponsor's spouse are counted in determining the eligibility and allotment level of a sponsored alien until the alien becomes a citizen or has worked 40 qualifying quarters of Social Security coverage. These provisions do not apply to battered aliens, their children, or the alien parent of a battered child.

AUTHORITY NOTE: Promulgated in accordance with F.R. 47:55463 et seq. and 47:55903 et seq., 7 CFR 273.11, P.L. 104-193, P.L. 104-208, and P.L. 105-33.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:130 (March 1983), amended by the Department of Social Services, Office of Family Support, LR 23:83 (January 1997), amended LR 24:

Madlyn B. Bagneris  
Secretary

9801#042

# **DECLARATION OF EMERGENCY**

## **Department of Social Services Office of the Secretary and Office of Family Support**

Child Care Assistance Program (LAC 67:I.101-107)  
(LAC 67:III.1181, 2913 and 5101-5109)

The Department of Social Services, Office of the Secretary and Office of Family Support exercises the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to adopt the following emergency rule. It is necessary to extend emergency rulemaking, since the declaration of emergency of October 1, 1997 was effective for a maximum of 120 days and would expire on January 30, 1998 before the final rule takes effect March 1, 1998.

Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, empowered the state to consolidate all child care programs administered by the Department of Social Services into a single child care program. The program will be administered entirely through the Office of Family Support. This emergency rule proposes to consolidate the current Child Care Assistance Program, administered through the Office of the Secretary, with other existing child care regulations in the Family Independence Temporary Assistance Program, Transitional Child Care, and the Family Independence Work Program. Consolidation, therefore, requires repeal and revision of all LAC 67:I and III. Sections containing regulations which will now be promulgated in LAC 67:III.Subpart 12.

The Office of Family Support has submitted its Child Care State Plan to the governing federal agency to consolidate regulations effective October 1, 1997, and the federal fiscal year begins October 1. Therefore, an emergency rule is necessary to avoid sanctions or penalties which could be imposed by delaying the action.

### **Title 67**

### **SOCIAL SERVICES**

#### **Part I. Office of the Secretary**

#### **Chapter 1. Reserved. (Previously Child Care Assistance Program)**

##### **§101. Eligibility Requirements**

Repealed effective October 1, 1997.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, Parts 255 and 257, and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 18:288 (March 1992), amended LR 18:1133 (October 1992), LR 18:1415 (December 1992), LR 19:1440 (November 1993), LR 20:459 (April 1994), LR 20:794 (July 1994), LR 20:899 (August 1994), LR 21:589 (June 1995), LR 23:527 (May 1997), repealed by the Office of the Secretary and Office of Family Support, LR 24:

##### **§103. Funding Availability and Waiting Lists**

Repealed effective October 1, 1997.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and Parts 255 and 257.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 18:288 (March 1992), amended LR 18:1269 (November 1992), LR 19:1441 (November 1993), LR 20:460 (March 1994), LR 20:900 (August 1994), LR 21:839 (August 1995), repealed by the Office of the Secretary and Office of Family Support, LR 24:

#### **§105. Child Care Providers**

Repealed effective October 1, 1997.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 18:288 (March 1992), amended LR 18:1269 (November 1992), LR 19:659 (May 1993), LR 19:784 (June 1993), LR 19:1034 (August 1993), LR 19:695 (November 1993), LR 20:459 (April 1994), LR 21:839 (August 1995), repealed by the Office of the Secretary and Office of Family Support, LR 24:

#### **§107. Payment**

Repealed effective October 1, 1997.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 18:1269 (November 1992), amended LR 19:695 (November 1993), LR 20:459 (April 1994), LR 21:839 (August 1995), repealed by the Office of the Secretary and Office of Family Support, LR 24:

### **Part III. Office of Family Support**

#### **Subpart 2. Family Independence Temporary Assistance Program**

#### **Chapter 11. Application, Eligibility, and Furnishing Assistance**

##### **Subchapter E. Transitional Child Care Assistance**

##### **§1181. Eligibility, Fees, and Payments**

Repealed effective October 1, 1997.

AUTHORITY NOTE: Promulgated in accordance with F.R. 54:42146 et seq. and 45 CFR Parts 255 and 257.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 16:238 (March 1990), amended by the Department of Social Services, Office of Family Support, LR 18:244 (March 1992), LR 18:687 (July 1992), LR 18:1268 (November 1992), repealed by the Office of the Secretary and Office of Family Support, LR 24:

##### **Subpart 5. Family Independence Work Program**

##### **Chapter 29. Organization**

##### **Subchapter C. Activities and Services**

##### **§2913. Support Services**

Support services include child care, transportation, and other employment-related expenses designed to eliminate or moderate the most common barriers to employment.

1. Effective October 1, 1997, child care support services and payments are administered through the Child Care Assistance Program, LAC 67:III. Subpart 12.

2 - 3. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 54:42146 et seq., 45 CFR Parts 250, 255, R.S. 46:456 and 457, and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 17:309 (March 1991), amended LR 17:388 (April 1991), LR 18:244 (March 1992), LR 18:687 (July 1992), LR 18:748 (July 1992), LR 18:1268 (November 1992), LR 19:504 (April 1993), LR 20:793 (July 1994), LR 23:451 (April 1997), amended by the Office of the Secretary and Office of Family Support, LR 24:

### **Subpart 12. Child Care Assistance**

#### **Chapter 51. Child Care Assistance Program**

##### **§5101. Authority**

The Child Care Assistance Program is established effective October 1, 1997 and administered under the authority of state and federal laws.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary and Office of Family Support, LR 24:

##### **§5103. Conditions of Eligibility**

A. Family Independence Temporary Assistance Program (FITAP) recipients who are satisfactorily participating in the Family Independence Work Program, as determined by the case manager, are eligible.

B. Low-income families not receiving FITAP cash assistance, including former FITAP recipients who are given priority consideration and guaranteed entry into the child care system for 24 months from termination of the cash payment, must meet the following eligibility criteria:

1. A household consists of a case head, that person's spouse, all children under the age of 18 who are dependent on the case head and/or spouse, and the parent(s) of dependent children if the parent(s) lives in the home. The household must reside in Louisiana to be eligible for child care assistance.

2. The household includes a child in need of child care services who is under age 13, or age 13 to age 18 and physically or mentally incapable of caring for himself or herself, as verified by a physician or certified psychologist, or under court supervision.

3. The child must customarily reside at least one-half of the time with the person who is applying for child care services and who is employed or attending a job training or educational program that is legally authorized by the state. The case head, that person's spouse, and any parents of dependent children, if the parent(s) lives in the household, must be employed or in training, unless disabled as established by receipt of SSA, SSI, worker's compensation, or other disability benefits.

4. Household income does not exceed 85 percent of the state median income for a household of the same size. *Income* is defined as the gross earnings of the case head, that person's spouse, and any parents of dependent children, if the parent(s) lives in the household, from all sources of employment, and the following types of unearned income: Social Security benefits, veterans' benefits, retirement benefits, disability benefits, child support and/or alimony, unemployment compensation benefits, worker's compensation, and Supplemental Security Income of all household members.

5. Noncitizens who are *qualified aliens*, as defined in LAC 67:III.1141 and 1143, may be eligible.

6. The family requests child care services, provides the information necessary for determining eligibility and benefit amount, and meets appropriate application requirements established by the state.

7. Applicants must provide verification to establish eligibility. Verification shall include Social Security cards for



all household members, birth certificates for all children, proof of all household income, and proof of the hours of employment or training for which child care services are required.

C. Eligible cases are assigned a certification period of up to 12 months. The household is required to report any changes that could affect eligibility or benefit amount within 10 days of knowledge of the change. Failure to report a change that affects eligibility or benefit amount can result in action to recover ineligible benefits.

D. Recipients will be disqualified in all cases in which the recipient has received child care benefits for which he is ineligible; the unrecovered amount of such benefits is at least \$200; and the recovery account was established after September 30, 1994. The disqualification shall be for a period of months equal to the unrecovered amount divided by the total estimated monthly benefit amount for which the household would otherwise be eligible. If the recipient is currently receiving benefits, the case shall be closed and the recipient may not reapply during the disqualification period. If the recipient is not receiving benefits and subsequently reapplies and is found eligible, the application is denied. The recipient may not be certified during the disqualification period.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99 and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary and Office of Family Support, LR 24:

#### **§5105. Funding Availability**

Louisiana's share of the national total of available funds for child care programs is based on factors determined by federal law and regulation. Funds are appropriated by Congress and allocated on an annual basis. The number of children who can be served by the Child Care Assistance Program is limited by the amount of funding available.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99 and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary and Office of Family Support, LR 24:

#### **§5107. Child Care Providers**

A. The parent or guardian is assured freedom of choice in selecting from a variety of child care providers, including center-based child care, family day care homes, in-home child care, and public and nonpublic BESE-regulated schools which operate kindergarten, prekindergarten, and/or before and after school care programs. The parent or guardian will be afforded the freedom to select the child care provider of his choice.

B. Family day care home providers must verify that they are at least 18 years of age, provide verification of Social Security number and residence, and meet all registration requirements to be eligible for participation. Family day care home providers who provide child care only to children related to them need only apply for registration as family day care homes, but must meet registration requirements within one year.

C. In-home child care providers must verify that they are at least 18 years of age and provide verification of their Social Security number and residence to be eligible for participation.

D. Under no circumstances can the following be considered eligible child care providers:

1. members of the child's household; or
2. the child's parent or guardian, regardless of whether that individual lives with the child; or
3. Class B child care centers; or
4. persons who have been convicted of a felony or of an offense involving a juvenile victim or who reside with a person who has been convicted of such an offense.

E. Providers may be disqualified from further participation in the program if the department determines that a condition exists which threatens the physical or emotional health or safety of any child in care, as, for example, where a complaint of child abuse or neglect against a provider or other person with access to children in care has been validated by authorities.

Providers shall certify that neither they, nor any person employed by or residing with them, has been the subject of a validated complaint of child abuse or neglect; nor have they, or any person employed by or residing with them, been convicted of a felony or of any offense involving a juvenile victim. They shall further certify that they have requested a criminal background check from the Louisiana Office of State Police to verify this information, with respect to the provider and employees, and shall submit proof of having done so before being certified as an eligible provider.

F. A quality incentive will be paid to each child care provider who achieves and maintains National Association for the Education of Young Children (NAEYC) accreditation. The incentive will be paid once each calendar quarter, and will be equal to 10 percent of all payments received by that provider from the certificate portion of the Child Care and Development Block Grant for services provided during the prior calendar quarter.

G. Funds in the form of scholarships will be granted to those child care providers who demonstrate an intention to attain appropriate training in Early Childhood Development.

H. The Child Care Assistance Program will provide cash assistance to child care providers to pay for repairs and improvements that are necessary to comply with DSS licensing or registration requirements.

1. The program will pay for one-half of the cost of such a repair or improvement, up to the following maximums, which are based on the capacity of the child care provider:

Number of Children	Maximum Grant
Up to 20	\$ 500
21-40	\$1,000
41-60	\$1,500
61-80	\$2,000
81-100	\$2,500
101-120	\$3,000
Over 120	\$3,500

2. A provider can receive no more than one such grant in any state fiscal year. To apply, the provider must submit an application form, along with verification that the repair or improvement is needed to meet DSS licensing or registration requirements and two written estimates of the cost of the repair or improvement.

**AUTHORITY NOTE:** Promulgated in accordance with 45 CFR Parts 98 and 99 and P.L. 104-193.

**HISTORICAL NOTE:** Promulgated by the Department of Social Services, Office of the Secretary and Office of Family Support, LR 24:

### §5109. Payment

A. Each nonFITAP household shall contribute toward the payment of child care costs based on the size of the household and household income. The sliding fee scale is as follows:

**SLIDING FEE SCALE FOR CHILD CARE ASSISTANCE RECIPIENTS**

Number in Household	2	3	4	DSS Percent	Client Percent
Monthly Household Income	0-884	0-1110	0-1337	100%	0%
	885-1162	1111-1448	1338-1736	90%	10%
	1163-1440	1449-1787	1737-2136	70%	30%
	1441-1718	1788-2126	2137-2535	50%	50%
	1719-1996	2127-2465	2536-2935	30%	70%
	Above 1996	Above 2465	Above 2935	0%	100%

Number in Household	5	6	7	DSS Percent	Client Percent
Monthly Household Income	0-1564	0-1790	0-2017	100%	0%
	1565-2024	1791-2311	2018-2503	90%	10%
	2025-2484	2312-2832	2504-2989	70%	30%
	2485-2944	2833-3353	2990-3475	50%	50%
	2945-3405	3354-3874	3476-3962	30%	70%
	Above 3405	Above 3874	Above 3962	0%	100%

Number in Household	8	9	10	DSS Percent	Client Percent
Monthly Household Income	0-2244	0-2470	0-2697	100%	0%
	2245-2695	2471-2887	2698-3079	90%	10%
	2696-3147	2888-3304	3080-3462	70%	30%
	3148-3598	3305-3721	3463-3844	50%	50%
	3599-4050	3722-4139	3845-4227	30%	70%
	Above 4050	Above 4139	Above 4227	0%	100%

Number in Household	11	DSS Percent	Client Percent
Monthly Household Income	0-2924	100%	0%
	2925-3271	90%	10%
	3272-3619	70%	30%
	3620-3967	50%	50%
	3968-4315	30%	70%
	Above 4315	0%	100%

B. The number of hours authorized is based on the lesser of the number of hours the child is actually in care; or the number of hours the case head, that person's spouse or parent with the least number of hours of work, training, or school needs child care in order to work or attend a job training or educational program; plus allowable commuting time.

C. Payments are based on the number of hours, as determined in §5109.B, paid according to the provider's actual charges, up to the following Standard Maximum Rate Schedule:

**CENTER-BASED CARE**

	Regular Care	Special Needs Care
Full Day	\$13.00	\$16.25
Half Day	\$6.50	\$8.13
Quarter Day	\$3.25	\$4.06

**ALL OTHER CATEGORIES OF CARE  
UNDER AGE 1**

	<b>Regular Care</b>	<b>Special Needs Care</b>
Full Day	\$11.00	\$13.75
Half Day	\$5.50	\$6.88
Quarter Day	\$2.75	\$3.44

**AGE 1 AND OLDER**

	<b>Regular Care</b>	<b>Special Needs Care</b>
Full Day	\$10.00	\$12.50
Half Day	\$5.00	\$6.25
Quarter Day	\$2.50	\$3.13

D. The payment amount for each month is a percentage, as shown in §5109.A, multiplied by the number of authorized hours and the standard rate, as determined in §5109.B and C.

E. Payment, as calculated in §5109.D, is made on a monthly basis, following the month in which services are provided, to the eligible child care provider selected by the parent as defined in §5107.

F. Payment will not be made for more than 10 days of absence by a child in a month. Payment will not be made for an extended closure by a provider of more than five consecutive days in any calendar month.

**AUTHORITY NOTE:** Promulgated in accordance with 45 CFR Parts 98 and 99 and P.L. 104-193.

**HISTORICAL NOTE:** Promulgated by the Department of Social Services, Office of the Secretary and Office of Family Support, LR 24:

Madlyn B. Bagneris  
Secretary

9801#048

**DECLARATION OF EMERGENCY**

**Department of Wildlife and Fisheries  
Wildlife and Fisheries Commission**

Apprentice Fisherman License (LAC 76:VII.409)

The Wildlife and Fisheries Commission does hereby exercise the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to its authority under R.S. 56:303.8 adopts the rule set forth below. This emergency rule is necessary to implement the provisions of R.S. 56:303.8 enacted by Act 1413 of the 1997 Regular Session of the Louisiana Legislature. This Act became effective on July 15, 1997 and it is necessary to promulgate this rule as a declaration of emergency in order to expedite the mandate of this Act.

This declaration of emergency is effective January 8, 1998 and shall remain in effect for the maximum period allowed

under the Administrative Procedure Act or until adoption of the final rule, whichever occurs first.

**Title 76**

**WILDLIFE AND FISHERIES**

**Part VII. Fish and Other Aquatic Life**

**Chapter 4. License and License Fees**

**§409. Apprentice Fisherman License**

**A. Definitions**

*Apprentice*—a real person who engages in the taking of finfish for a period of two years only with and aboard the vessel of a validly-licensed commercial fisherman who also holds a valid and appropriate permit/license issued by the department and who is engaged in the commercial taking of saltwater finfish by approved methods.

**B. Application**

1. At the time of application for an apprentice license, the applicant must provide a notarized affidavit, signed by both the applicant and the mentor, providing the Social Security Number, name, address and commercial fisherman's license number of his mentor and stating the intent to participate in the apprenticeship program.

2. The cost for the apprentice license shall be one half the cost of a commercial fisherman's license.

C. Seasons. A person who holds an apprentice license shall be aboard the vessel with and in the presence of his mentor while engaged in the taking of finfish under this "special apprentice license." The apprentice license shall authorize, under the same conditions as the regular license or permit, the commercial taking of saltwater finfish by the apprentice while in the presence of his mentor during the period for which it is valid. The special apprentice license shall be valid from January 1 through December 31. An apprentice license must be purchased prior to January 31 to qualify for one full year as an apprentice for the following license year.

**D. Eligibility**

1. Having held a valid apprentice license for two full years may substitute for the requirement of having held a gill net gear license in two of the years 1993, 1994 and 1995 when applying for a spotted seatrout permit, mullet permit, or rod and reel license. In addition to providing all commercial license application information, the applicant shall be required to show that he derived more than 50 percent of his earned income from the legal capture and sale of seafood species for the two years in which he held the apprentice license. Proof of such income shall be provided by the apprentice using one of the methods listed in the appropriate permit or license section that has been approved by the commission.

2. In addition to all other requirements, any applicant applying for a rod and reel license must provide a signed copy of his/her state income tax return for the years in which an apprentice license was held, or a notarized affidavit certifying that he/she was not required to file a state tax return.

3. The Socioeconomic Section of the Department of Wildlife and Fisheries, Office of Management and Finance, will review the submitted tax return information and determine if applicant meets the income eligibility requirement.

E. General Provision. Any person who previously held a commercial fisherman's license, or who has been convicted of a class three or greater violation, shall not be eligible to purchase an apprentice license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:303.8.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 24:

Daniel J. Babin  
Chairman

9801#032

## **DECLARATION OF EMERGENCY**

### **Department of Wildlife and Fisheries Wildlife and Fisheries Commission**

#### **Commercial Red Snapper Season**

The red snapper fishery in the Gulf of Mexico is cooperatively managed by the Department of Wildlife and Fisheries and the National Marine Fisheries Service (NMFS) with advice from the Gulf of Mexico Fishery Management Council (Gulf Council). Regulations promulgated by NMFS are applicable in waters of the Exclusive Economic Zone (EEZ) of the United States, generally three miles offshore. Rules were recently established by NMFS to provide for commercial harvest seasons and limits for red snapper in the EEZ off of Louisiana, and NMFS and the Gulf Council requested that consistent regulations be established in Louisiana waters. NMFS and the Gulf Council typically request consistent regulations in order to enhance the effectiveness and enforceability of regulations for EEZ waters.

The 1998 commercial red snapper fishery in EEZ waters will operate under two sets of seasonal openings, one beginning February 1 and one beginning September 1. During each season, the fishery will open at noon of the first day of each month and close at noon on the fifteenth day of each month, until the allotted portion of the commercial red snapper quota has been harvested. Two-thirds of the annual commercial quota has been allotted to the first set of seasonal openings that begins in February, and the remainder of the quota will be harvested under the second set of openings that begins in September. In order to adopt regulations in a timely manner so as to have compatible regulations in place in Louisiana waters for the 1998 commercial red snapper season, it is necessary that emergency rules be adopted.

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act; R.S. 49:967 which allows the Wildlife and Fisheries Commission to use emergency procedures to set finfish season; and R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, the Wildlife and Fisheries Commission hereby sets the following seasons for commercial harvest of red snapper in Louisiana state waters:

The season for the commercial fishery for red snapper in Louisiana state waters will open at 12 noon, February 1, 1998.

The commercial fishery for red snapper in Louisiana waters will close at 12 noon, February 15, 1998. The commercial season for red snapper harvest in Louisiana state waters will also reopen at 12 noon on March 1, 1998 and close at 12 noon on March 15, and thereafter open at 12 noon on the first of each month and close at 12 noon on the fifteenth of each month for each month of 1998, until two-thirds of the 1998 commercial red snapper quota for the Gulf of Mexico has been harvested or projected to be harvested.

The commission grants authority to the secretary of the Department of Wildlife and Fisheries to change the closing dates for the commercial red snapper season in Louisiana state waters when he is informed that two-thirds of the commercial red snapper quota for the Gulf of Mexico has been harvested or projected to be harvested. Such closure order shall close the season until 12 noon September 1, 1998, which is the date set for the reopening of the 1998 commercial red snapper season in federal waters.

The season for the commercial fishery for red snapper in Louisiana state waters will reopen at 12 noon September 1, 1998. The commercial fishery for red snapper in Louisiana waters will close at 12 noon September 15, 1998. The commercial season for red snapper harvest in Louisiana state waters will also reopen at 12 noon on October 1, 1998 and close at 12 noon on October 15, and thereafter open at 12 noon on the first of each month and close at 12 noon on the fifteenth of each month for each month of 1998, until the remainder of the 1998 commercial quota is harvested.

The commission grants authority to the secretary of the Department of Wildlife and Fisheries to change the closing dates for the commercial red snapper season in Louisiana state waters when he is informed that the commercial red snapper quota for the Gulf of Mexico has been harvested or projected to be harvested. Such closure order shall close the season until the date set for the opening of the 1999 commercial red snapper season in federal waters.

The commission also grants authority to the secretary of the Department of Wildlife and Fisheries to change the opening dates for the commercial red snapper season in Louisiana state waters if he is informed by the regional director of the National Marine Fisheries Service (NMFS) that the season dates for the commercial harvest of red snapper in the federal waters of the Gulf of Mexico as set out herein have been modified, and that the regional director of NMFS requests that the season be modified in Louisiana state waters.

Nothing herein shall preclude the legal harvest of red snapper by legally licensed recreational fishermen. Effective with any closure, no person shall commercially harvest, transport, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell red snapper. Effective with the closure, no person shall possess red snapper in excess of a daily bag limit, provided, however, that fish in excess of a daily bag limit which were legally taken prior to the closure may be purchased, possessed, transported, and sold by a licensed wholesale/retail seafood dealer or retail seafood dealers if appropriate records in accordance with R.S. 56:306.4 are properly maintained. Those other than wholesale/retail seafood dealers or retail seafood dealers may purchase such fish in excess of the daily bag limit from wholesale/retail

seafood dealers or retail seafood dealers for their own use or for sale by a restaurant as prepared fish.

Daniel J. Babin  
Chairman

9801#029

## **DECLARATION OF EMERGENCY**

### **Department of Wildlife and Fisheries Wildlife and Fisheries Commission**

#### **Mullet Harvest—Proof of Income (LAC 76:VII.343)**

The Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, in accordance with the Administrative Procedure Act, R.S. 49:953(B), amends its mullet harvest rules, through emergency rule procedures.

Currently, under LAC 76, the only acceptable method an applicant can use to provide proof of income eligibility when applying for a mullet permit is a certified Internal Revenue Service (IRS) copy of his federal income tax return. Many fishermen are having difficulties in obtaining a certified copy of their federal tax returns and have received letters from the IRS stating that their returns are unavailable at this time. As a result of this, the commission has adopted additional acceptable alternative methods to prove income eligibility. These include: an IRS-stamped transcript, along with a copy of the applicant's income tax return; or a copy of the applicant's federal income tax return that has been filed at the local IRS and stamped "received." Both additional methods also require a signed IRS cover letter certifying that the information attached reflects or is a copy of the original federal tax return filed by the applicant.

A declaration of emergency is necessary, since the mullet season begins the third Monday of October, and there is insufficient time to adopt this change through the normal process of the Administrative Procedure Act.

This declaration of emergency is effective January 29, 1998 and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule, whichever occurs first.

#### **Title 76**

### **WILDLIFE AND FISHERIES**

### **Part VII. Fish and Other Aquatic Life**

### **Chapter 3. Saltwater Sport and Commercial Fishery**

#### **§343. Harvest of Mullet**

\* \* \*

#### **E. Permits**

\* \* \*

2. No person shall be issued a license or permit for the commercial taking of mullet unless that person meets all of the following requirements:

a. the person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993;

b. the person shall show that he derived more than 50 percent of his earned income from the legal capture and sale

of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant, using any of the methods listed below:

i. Method 1. Applicant shall submit to the Department of Wildlife and Fisheries (Licensing Section) a copy of his federal income tax return, including all attachments (e.g., Schedule C of Federal Form 1040, Form W-2, etc.), which has been certified by the Internal Revenue Service (IRS);

ii. Method 2. Applicant shall submit to the Department of Wildlife and Fisheries (Licensing Section) a copy of his federal income tax return, including all attachments (e.g., Schedule C of Federal Form 1040, Form W-2, etc.), which has been filed and stamped "received" at a local IRS office, accompanied by a signed cover letter acknowledging receipt by the IRS;

iii. Method 3. Applicant shall submit to the Department of Wildlife and Fisheries (Licensing Section) a signed copy of his federal tax return, including all attachments (e.g., Schedule C of Federal Form 1040, Form W-2, etc.) along with an IRS-stamped transcript and IRS-signed cover letter. Transcripts are available at local IRS offices;

c. the Socioeconomic Section of the Department of Wildlife and Fisheries, Office of Management and Finance will review the submitted tax return information and determine applicant's eligibility as defined by R.S. 56:333(D)(1)(b);

d. the person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a), 56:325.1 and R.S. 56:333.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:1420 (December 1992), amended LR 21:37 (January 1995), LR 22:236 (March 1996), LR 24:

Daniel J. Babin  
Chairman

9801#027

## **DECLARATION OF EMERGENCY**

### **Department of Wildlife and Fisheries Wildlife and Fisheries Commission**

#### **Reef Fish Daily Take and Size Limits (LAC 76:VII.335)**

The Wildlife and Fisheries Commission does hereby exercise the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) and 49:967(D), and pursuant to its authority under R.S. 56:6(25)(a), 56:326.1 and 56:326.3 adopts the rule set forth below. This emergency rule is necessary to expedite the enforceability and effectiveness of federal regulations on commercial reef fish fisheries for red snapper and greater amberjack, which became effective December 30, 1997, and require action before February 1, 1998 and March 1, 1998 respectively. It is therefore in the best interest of the state, and appropriate that these regulations be enacted concurrently, thereby requiring emergency action.

This emergency rule is effective January 8, 1998 and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule, whichever occurs first.

#### **Title 76**

#### **WILDLIFE AND FISHERIES**

#### **Part VII. Fish and Other Aquatic Life**

#### **Chapter 3. Saltwater Sport and Commercial Fishery**

#### **§335. Daily Take, Possession and Size Limits Set by Commission, Reef Fish**

\* \* \*

E. All persons who do not possess a "Class 1" or "Class 2" red snapper license issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for the Gulf of Mexico Reef Fish resources are limited to the recreational bag limit for red snapper. Those persons possessing a "Class 2" red snapper license issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for the Gulf of Mexico Reef Fish resources are limited to a daily take and possession limit of 200 pounds of red snapper per vessel.

F. Those persons possessing a "Class 1" red snapper license issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for the Gulf of Mexico Reef Fish resources are limited to a daily take and possession limit of 2,000 pounds of red snapper per vessel.

\* \* \*

J. The season for the commercial harvest of greater amberjack shall be closed during the months of March through May of each year. Possession of greater amberjack in excess of the daily bag limit while on the water is prohibited during the closed season. Any greater amberjack harvested during the closed season shall not be purchased, sold, traded, bartered or exchanged or attempted to be purchased, sold, traded, bartered or exchanged. The provisions of §335.J apply to fish taken within or without Louisiana's territorial waters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a), 56:326.1 and 326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 16:539 (June 1990), amended LR 19:1442 (November 1993), LR 20:797 (July 1994), LR 21:1267 (November 1995), LR 22:860 (September 1996), LR 24:

Daniel J. Babin  
Chairman

9801#030

#### **DECLARATION OF EMERGENCY**

#### **Department of Wildlife and Fisheries Wildlife and Fisheries Commission**

#### **Saltwater Commercial Rod and Reel License—Proof of Income (LAC 76:VII.405)**

The Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, in accordance with the Administrative

Procedure Act, R.S. 49:953(B), amends its saltwater commercial rod and reel license rules, through emergency rule procedures.

Currently, under LAC 76, the only acceptable method an applicant can use to provide proof of income eligibility when applying for a rod and reel license is a certified Internal Revenue Service (IRS) copy of his federal income tax return. Many fishermen are having difficulties in obtaining a certified copy of their federal tax returns and have received letters from the IRS stating that their returns are unavailable at this time. As a result of this, the commission has adopted additional acceptable alternative methods to prove income eligibility. These include: an IRS-stamped transcript, along with a copy of the applicant's income tax return or a copy of the applicant's federal income tax return that has been filed at the local IRS and stamped "Received." Both additional methods also require a signed IRS cover letter certifying that the information attached reflects, or is a copy of, the original federal tax return filed by the applicant. In addition, both methods require a copy of the applicant's state income tax return or a notarized affidavit by the applicant stating that he was not required to file a state return for that year.

A declaration of emergency is necessary, since the rod and reel is the only gear that can be used to commercially harvest spotted sea trout beginning on the third Monday of November, and there is insufficient time to adopt this change through the normal process of the Administrative Procedure Act.

This declaration of emergency is effective January 29, 1998 and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule, whichever occurs first.

#### **Title 76**

#### **WILDLIFE AND FISHERIES**

#### **Part VII. Fishing and Other Aquatic Life**

#### **Chapter 4. License and License Fees**

#### **§405. Saltwater Commercial Rod and Reel License; Proof of Income**

A. Each applicant shall have derived more than 50 percent of his earned income from the legal capture and sale of seafood species in at least two of the three years, 1995, 1994, and 1993.

B. Proof of such income for at least two of the three years 1995, 1994, and 1993 shall be provided by the applicant, using any of the methods listed below:

1. Method 1. Applicant shall submit to the Department of Wildlife and Fisheries (Licensing Section) a copy of his federal income tax return, including all attachments (e.g., Schedule C of Federal Form 1040, Form W-2, etc.), which has been certified by the Internal Revenue Service (IRS) and a copy of his state tax return, provided applicant was required to file.

2. Method 2. Applicant shall submit to the Department of Wildlife and Fisheries (Licensing Section) a copy of his federal income tax return, including all attachments (e.g., Schedule C of Federal Form 1040, Form W-2, etc.), which has been filed and stamped "Received" at a local IRS office, accompanied by a signed cover letter acknowledging receipt by the IRS and a copy of his state tax return, provided applicant was required to file.

3. Method 3. Applicant shall submit to the Department of Wildlife and Fisheries (Licensing Section) a signed copy of his federal tax return including all attachments (e.g., Schedule C of Federal Form 1040, Form W-2, etc.) along with an IRS-stamped transcript and IRS-signed cover letter and a copy of his state tax return, provided applicant was required to file. Transcripts are available at local IRS offices.

C. The Socioeconomic Section of the Department of Wildlife and Fisheries, Office of Management and Finance, will review the submitted tax return information and determine applicant's eligibility, as defined by R.S. 56:305B(14)(b).

D. If the applicant was not required to file a state tax return, the applicant shall provide a notarized affidavit certifying that he was not required to file a state tax return.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:13.1.D.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 22:237 (March 1996), amended LR 24:

Daniel J. Babin  
Chairman

9801#028

## DECLARATION OF EMERGENCY

### Department of Wildlife and Fisheries Wildlife and Fisheries Commission

#### Shrimp Season—Zone 1

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 967, and in accordance with R.S. 56:497(A)(9), which allows the Wildlife and Fisheries Commission to delegate authority to the secretary of the department to set seasons, and in accordance with the resolution adopted by the Wildlife and Fisheries Commission at its August 7, 1997 meeting, which granted authority to the secretary of the department to change the closing date of the 1997 Fall Inshore Shrimp Season, notice is hereby given that the secretary of the Department of Wildlife and Fisheries declares:

1. The 1997 Fall Inshore Shrimp Season will close statewide at sunset on December 14, 1997, except for that portion of Zone 1 extending north of the south shore of the Mississippi River Gulf Outlet, including Lake Pontchartrain, which shall close at official sunset, December 21, 1997.

2. Additionally, Breton and Chandeleur Sounds, as described in R.S. 56:495.1(A)(2), shall remain open until 6 a.m., April 1, 1998.

James H. Jenkins, Jr.  
Secretary

9801#004

## DECLARATION OF EMERGENCY

### Department of Wildlife and Fisheries Wildlife and Fisheries Commission

#### Spotted Seatrout Management Measures—Proof of Income (LAC 76:VII.341)

The Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, in accordance with the Administrative Procedure Act, R.S. 49:953(B), amends its Spotted Seatrout Management Rules, through emergency rule procedures.

Currently, under LAC 76, the only acceptable method an applicant can use to provide proof of income eligibility when applying for a spotted seatrout permit is a certified Internal Revenue Service (IRS) copy of his federal income tax return. Many fishermen are having difficulties in obtaining a certified copy of their federal tax returns and have received letters from the IRS stating that their returns are unavailable at this time. As a result of this, the commission has adopted additional acceptable alternative methods to prove income eligibility. These include an IRS-stamped transcript, along with a copy of the applicant's income tax return; or a copy of the applicant's federal income tax return that has been filed at the local IRS office and stamped "Received." Both additional methods also require a signed IRS cover letter certifying that the information attached reflects, or is a copy of, the original federal tax return filed by the applicant.

A declaration of emergency is necessary, since the spotted seatrout season is scheduled to begin the third Monday of November, and there is insufficient time to adopt this change through the normal process of the Administrative Procedure Act.

This declaration of emergency is effective January 29, 1998 and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule, whichever occurs first.

#### Title 76

#### WILDLIFE AND FISHERIES

#### Part VII. Fish and Other Aquatic Life

#### Chapter 3. Saltwater Sport and Commercial Fishery

#### §341. Spotted Seatrout Management Measures

##### A. Commercial Season; Quota; Permits

\* \* \*

##### 4. Permits

\* \* \*

b. No person shall be issued a license or permit for the commercial taking of spotted seatrout unless that person meets all of the following requirements:

i. the person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993;

ii. the person shall show that he derived more than 50 percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant using any of the methods listed below:

(a). Method 1. Applicant shall submit to the Department of Wildlife and Fisheries (Licensing Section) a copy of his federal income tax return, including all attachments (e.g., Schedule C of Federal Form 1040, Form W-2, etc.), which has been certified by the Internal Revenue Service (IRS);

(b). Method 2. Applicant shall submit to the Department of Wildlife and Fisheries (Licensing Section) a copy of his federal income tax return including all attachments (e.g., Schedule C of Federal Form 1040, Form W-2, etc.), which has been filed and stamped "Received" at a local IRS office accompanied by a signed cover letter acknowledging receipt by the IRS;

(c). Method 3. Applicant shall submit to the Department of Wildlife and Fisheries (Licensing Section) a signed copy of his federal tax return including all attachments (e.g., Schedule C of Federal Form 1040, Form W-2, etc.) along with an IRS stamped transcript and IRS signed cover letter. Transcripts are available at local IRS offices;

iii. the Socioeconomic Section of the Department of Wildlife and Fisheries, Office of Management and Finance, will review the submitted tax return information and determine applicant's eligibility, as defined by R.S. 56:325.3 (D)(1)(b);

iv. the person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C);

v. the applicant shall not have been convicted of any fishery-related violations that constitute a class three or greater violation.

c. No person shall receive more than one permit or license to commercially take spotted seatrout.

d. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any permit or license issued to commercially take spotted seatrout and shall be forever barred from receiving any permit or license to commercially take spotted seatrout.

5. Each spotted seatrout permit holder shall, on or before the tenth of each month of the open season, submit an information return to the department on forms provided or approved for this purpose, including the pounds of spotted seatrout taken commercially during the preceding month and the commercial dealers to whom these were sold, if sold. Monthly reports shall be filed even if catch or effort is zero.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a); 56:325.3; and 56:326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:199 (February 1992), amended LR 22:238 (March 1996), LR 24:

Daniel J. Babin  
Chairman

9801#026